

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2019-028-10027R

Parcel Nos. 180-25-00-015-20 & 180-25-00-015-40

JCDUB, LLC & James C Wessels,

Appellants,

vs.

Delaware County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on December 13, 2019. James Wessels represented himself and JCDUB, LLC. Delaware County Assessor Dan Lett represented the Delaware County Board of Review.

JCDUB, LLC and James Wessels (hereinafter referred to as Wessels) are the deed holders and contract deed holders for two parcels located at 8th Street NW, rural Dyersville, Iowa. Their January 1, 2019 classifications were set as residential, and their assessed values were set at \$75,700 and \$3,000 respectively. (Exs. A1 & A2).

Wessels petitioned the Board of Review claiming the subject parcels were misclassified under Iowa Code section 441.37(1)(a)(3). (Exs.C1 & C2). The Board of Review denied the petition. (Exs B1 & B2). Wessels reasserts his claim that the properties are misclassified to PAAB.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2019). PAAB is an agency and the provisions of the Administrative Procedure

Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-126.2(2-4). New or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it.

§ 441.37A(3)(a); see also *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted).

Findings of Fact

Wessels purchased two parcels in rural Delaware County in March 2018. One parcel was approximately 2 acres and improved with a dwelling. This parcel was classified residential. Wessels purchased it for \$300,000. (Ex. J1, 12). The other parcel was 8.01-acres of farm ground improved with a horse barn, a lean-to, and Quonset building. At that time, the farm parcel was classified as agricultural. Wessels purchased the farm parcel on contract for \$250,000. (Exs. G, I-1, J-1 & J-2). Wessels testified he originally considered living in the dwelling but later decided to sell it and keep the farm parcel. He had the two parcels re-platted into three parcels, carving out approximately 1 acre flag-shaped lot from the dwelling parcel to allow him access to the buildings on the larger farm parcel. (Exs. 1, H-1 & H-2). In August 2018, he sold the newly platted 1.44-acre dwelling parcel for \$325,000 to a third party. (Ex. I1, 12).

The two remaining parcels are the subject of this appeal. Parcel number 180-25-00-015-20 is the 8.010-acre site improved with a horse barn, a lean-to and a Quonset building. It is assessed for \$75,700, allocated as \$66,000 in land value and \$9,700 in improvement value. Parcel number 180-25-00-015-40 is the 0.950-acre flag-shaped site carved out of the dwelling parcel site. (Ex. H2). It has a small shed, which has been given no value in the assessment. It is assessed for \$3,000, allocated entirely to land

value. Wessels intended for the parcels to be combined into one 8.96-acre parcel. (Ex.1).

Wessels testified the parcels had been classified agricultural; he is currently using them for agricultural activity and intends to continue to do so. He stated he purchased the subject parcels as an investment. Neither of the subject parcels are improved with a dwelling, septic, well, or utilities, other than borrowed electricity and water supplied by the owner of the dwelling parcel.

On cross-examination, the Board of Review asked Wessels about the biennial report filed with the Iowa Secretary of State in January 2019 for the LLC. The Board of Review's question indicated the report stated the LLC did not own an interest in any agricultural land in the State of Iowa. Wessels responded that the biennial report was filed by his accountant. The report was not submitted as an exhibit to PAAB.

Wessels leases the subject parcels and improvements to his neighbor for \$1,000 annually. (Exs. F-1 & F-2). The neighbor plants and harvests hay on the parcels and pastures his livestock there. Wessels testified the pasture is fenced and provided photographs showing horses and cattle grazing on the property. (Ex. 7, 9). The neighbor also uses the barn for his livestock. Wessels testified there is timber on the subject parcels that may be cut in the future. He has the properties insured as agricultural, but does not file a Schedule F based on his accountant's advice. His real estate contract requires monthly payments of \$2,370. (Ex. G)

Wessels testified he has no present intention to subdivide the subject parcels or build on them. The properties to the north and west of the subject are classified agricultural. A residential development abuts his property to the east. The properties across the street are in Dubuque County and are classified residential. He was not aware of any city planning for development of this area.

Matt Mescher also testified for Wessels. Mescher previously challenged the reclassification of his property. *Mescher v. Dubuque Cnty. Bd. of Review*, PAAB Docket No. 09-31-0703 (Nov. 29, 2010). He assisted Wessels in preparing his Board of Review petition. He believes Iowa law requires that property be classified based on its current use.

Delaware County Assessor Dan Lett testified for the Board of Review. Lett has twenty years of experience dealing with the classification of real property. He reviewed the 2018 purchase of the subject properties and asserted the combined purchase price raised a red flag in his mind. He testified the purchase price represented a per acre cost of approximately \$30,000 per acre, almost double the highest sale price he knew of for agricultural property in Delaware County. This prompted Lett to contact Wessels with follow up questions about his intentions. Lett acknowledged agricultural activity was taking place on the subject properties, but given the amount of the monthly contract price and the \$1,000 annual rental income, he did not believe Wessels had a good faith intent to profit. For that reason he changed the classification of the subject properties to residential. Wessels stated while his agricultural activity may not be immediately profitable, he intends to be profitable over time.

Analysis & Conclusions of Law

Wessels asserts the subject parcels were misclassified as residential property and should be classified agricultural.

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. See Iowa Admin. R. 701-71.1. The assessor shall classify property according to its present use. *Id.* Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. R. 701-71.1(2). There can be only one classification per property, except as provided for in paragraph 71.1(5) “b”. R. 701-71.1(1). The determination of a property’s classification “is to be decided on the basis of its primary use.” *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989).

Administrative rule 701-71.1(3) provides in pertinent part:

Agricultural real estate shall include all tracts of land and the improvements and structures located on them *which are in good faith used primarily for agricultural purposes* except buildings which are primarily used or intended for human habitation as defined in subrule

71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, *all for intended profit*. Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in paragraph “a” or “b” of this subrule. . . . [Emphasis added]

Residential property “shall include all land and buildings which are primarily used or intended for human habitation.” R. 701-71.1(4). This includes the dwelling as well as structures used in conjunction with the dwelling, such as garages and sheds. *Id.*

Our focus here is on the property’s present and primary use considering the aforementioned assessment classification rules and case law. The question is whether the property meets the requirements for agricultural classification under Iowa Admin. R. 701-71.1(3).

We find the record contains evidence demonstrating agricultural use is presently taking place on the subject properties. They have consistently been used as hay ground and pasture and that use continues. There is no dwelling or other building on the subject properties that is primarily used or intended for human habitation. Indeed, the only apparent use of the subject properties is by the tenant who has cattle and horses he pastures there and which consume the hay grown there. See *Grubb v. Dallas Cnty. Bd. of Review*, PAAB Docket No. 11-25-0338 (Nov. 8, 2012) (tenant farming unimproved sites sufficient to constitute agricultural use.). Compare *Schwery v. Harrison Cnty. Bd. of Review*, PAAB Docket No. 2016-043-00098R (March 26, 2018) (two unimproved lots in a planned residential development district properly classified residential notwithstanding continuing hay cropping.). Additionally, we have no reason to believe these agricultural endeavors are not being done in good faith.

As it often is, the more difficult question concerns whether there is an intent to profit. Wessels testified he bought the parcels as an investment. Wessels does not personally farm the land, but he entered into farm lease with a neighbor at the time of his purchase. The neighbor pays Wessels \$1000/annually for use of the property. While

Wessels' lease arrangement is not sufficient to cover his contract installment obligation for the land, the classification rule requires only an intent to profit rather than actual profit.

Although unspoken, the Board of Review seems to imply the land purchase price denotes an intention for residential or commercial development. Wessels' credible testimony did not indicate any present or immediate intent to develop the property. There is also no other evidence indicating a present or immediate intent to develop the property. Moreover, it is the present use, not the highest and best use that controls the classification. If the use of the subject properties changes in the future, the classification can be revisited at that time. We are persuaded Wessels' has the intent to profit from the agricultural use and that the agricultural use is the present and primary use of the subject properties.

Viewing the record as a whole, we find Wessels supported his claim that the subject properties are misclassified.

Order

PAAB HEREBY MODIFIES the Delaware County Board of Review's action.

Parcels 180-25-00-015-20 & 180-25-00-015-40 shall be classified as agricultural real estate as of the January 1, 2019, assessment date.

PAAB ORDERS the Board of Review/Assessor to revalue the subject property as agricultural real estate as of January 1, 2019, and file the modified assessment with PAAB within 15 days of the date of this Order. The Appellants then have 10 days to file an objection, if any. Subsequently, PAAB will issue its final agency action setting the property's assessed value as of January 1, 2019.



Elizabeth Goodman, Board Member



Dennis Loll, Board Member



Karen Oberman, Board Member

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Delaware County Board of Review by eFile